

**DEPARTMENT OF TRANSPORTATION
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 1999-139

FINAL DECISION

ANDREWS, Attorney-Advisor:

This proceeding was conducted according to the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. On July 1, 1999, the BCMR received the application in this case, which was completed on February 3, 2000, upon receipt of the applicant's military records.

This final decision, dated September 28, 2000, is signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST AND ALLEGATION

The applicant, a former xxxxxxxxxxxx, asked the Board to order the Coast Guard to pay him for his last 14 days of active duty. He alleged that he received his last pay check on xxxxxx, 1998, but continued to serve through xxxxxxxxxxx, 1998. He alleged that "it appears [he] was not paid for 14 days of active service."

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on October 31, 19xx. In 1994 and 1995, he received administrative entries in his record indicating that he was warned that he exceeded his maximum allowed weight. On August 31, 1995, the Coast Guard granted him an exception to the standard weight tables so that his individual maximum allowable weight was 234 pounds.

On June 1, 1998, the applicant reenlisted for 6 years to receive a reenlistment bonus. However, on xxxxxxxx, 1998, he was weighed during a random

urinalysis and found to be 46 pounds overweight. On xxxxxxxx, 1998, his command notified him that, because the probationary period for losing 46 pounds exceeded 36 weeks, he would be recommended for separation. On xxxxxxxx, 1998, a doctor verified that the applicant was 46 pounds overweight.

On xxxxxxxxxx, 1998, the applicant's commanding officer (CO) recommended to the Commander of the Military Personnel Command that the applicant be discharged because the probationary period prescribed for losing 46 pounds (46 weeks) exceeded the maximum probationary period permitted (10 months). The CO also stated that the applicant "has shown no desire to lose the excess weight and has expressed a desire to be discharged from the Coast Guard." The applicant signed a statement indicating that he did not wish to submit a statement on his own behalf. On xxxxxxxxxxxx, 1998, the Military Personnel Command issued orders for the applicant to be discharged by xxxxxxxx, 1998.

On xxxxxxxx, 1998, the applicant was discharged for failing to meet his weight standard. He was assigned an RE-3F reenlistment code, indicating that he was eligible to reenlist except for the fact that he exceeded his maximum allowable weight. In addition, he was advised that he could seek reenlistment without loss of rank if he met his allowable maximum weight at least 6 months but no more than 12 months after his discharge.

VIEWS OF THE COAST GUARD

On August 2, 2000, the Chief Counsel of the Coast Guard submitted an advisory opinion in which he recommended that the Board deny relief for lack of jurisdiction.

The Chief Counsel argued that the Chairman should dismiss this case or the Board should deny relief because the applicant has not alleged any specific error or injustice in his record. Because the applicant asks only to be paid, the Chief Counsel argued, his claim is purely monetary and does not involve a correction of his record. Under 31 U.S.C. § 3702, he stated, members' claims for pay, allowances, and benefits that do not involve record corrections must be settled by the Secretary of Defense. In the alternative, he argued, the Board should dismiss the case for lack of jurisdiction.

The Chief Counsel stated that the applicant did not receive a paycheck for his last two weeks on active duty because, at the time of his discharge, he owed the Coast Guard an amount that exceeded what he would have been paid for that period. The applicant's Leave and Earning Statement shows that he was paid through xxxxxxxxxx, 1998, he alleged, but "[n]o money was sent to Applicant's account because it was applied toward his debt." The Chief Counsel

alleged that the applicant was informed that the money would go toward paying off his in-service debt prior to his discharge, on xxxxxxx, 1998, and again after he inquired about it on June 22, 1999. Therefore, he argued, there is no merit to the applicant's allegations.

The Chief Counsel attached to his advisory opinion a memorandum from the Acting Chief of the Compensation Division, who explained that the money was used to offset the applicant's in-service debts, including "unliquidated advance pay" and the unearned reenlistment bonus. He alleged that the applicant still owes money on these debts, and the debt "has been referred to the Treasury Department's Financial Management Service for collection." Copies of the following documents were attached to the memorandum:

- An e-mail message dated xxxxxxxx, 1998, stating that no initial separation payment was authorized for the applicant "due to collection of in-service debt."
- A letter dated July 9, 1999, from the Coast Guard Entitlements and Debts Auditor to the applicant, stating that at the time of his discharge, he owed \$3,806.35, and so his final payment of \$1,232.12 was applied to reduce that debt.
- Leave and Earning Statements indicating that the applicant's pay was calculated based on his active service through xxxxxxxx, 1998, but that the pay was applied toward his in-service debts.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On August 2, 2000, the BCMR sent the applicant a copy of the views of the Coast Guard and invited him to respond within 15 days. The applicant did not respond.

APPLICABLE LAWS

Title 10 U.S.C. § 1552(c) provides that "[t]he Secretary concerned may pay, from applicable current appropriations, a claim for the loss of pay, allowances, compensation, emoluments, or other pecuniary benefits, or for the repayment of a fine or forfeiture, if, as a result of correcting a record under this section, the amount is found to be due the claimant on account of his or another's service in the Army, Navy, Air Force, Marine Corps, or Coast Guard, as the case may be, or on account of his or another's service as a civilian employee." [Emphasis added.]

Title 31 U.S.C. § 3702(a) provides that “[e]xcept as provided in this chapter or another law, all claims of or against the United States Government shall be settled as follows: (1) The Secretary of Defense shall settle – (A) claims involving uniformed service members' pay, allowances, travel, transportation, retired pay, and survivor benefits”

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the applicant's military record and submissions, the Coast Guard's submissions, and applicable law:

1. The application was timely.
2. The Chief Counsel argued that this case should be dismissed for lack of jurisdiction because the applicant’s claim is essentially monetary. However, monetary claims are often based upon records, which may be erroneous. Under 10 U.S.C. § 1552(c), the Secretary may pay claims that are found to be due after an erroneous record has been corrected.
3. The applicant did not prove that the Coast Guard committed any error or injustice in calculating his in-service debt or in applying his final pay toward reduction of that debt. He did not allege or otherwise identify any error or injustice in his record for the Board to correct. Nor has the Board found any error or injustice in the applicant’s record with respect to his claim.
4. Under 31 U.S.C. § 3702(a), the Secretary of Defense can settle monetary claims against the Coast Guard that do not involve any alleged error or injustice in a military record. Therefore, if the applicant cannot prove any error in his record for the Board to correct, he may file his claim with the Secretary of Defense.
5. Accordingly, the applicant’s request should be denied.

[ORDER AND SIGNATURES ON FOLLOWING PAGE]

ORDER

The application for correction of the military record of former XXXXXXXX, USCG, is hereby denied.

Barbara Betsock

George Kuehne, Jr.

Michael J. McMorrow